REMARKS

Claims 1-18 are pending and rejected in this application.

Responsive to the rejection of claims 1-18 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 5,423,457 (Nicholas et al), Applicants hereby respectfully traverse this rejection and submit that claims 1-18 are in condition for allowance in the present form.

Applicants submit that the Examiner has not presented a proper rejection of claims 1-18 under 35 U.S.C. § 103(a). Specifically, the Examiner has not set forth any particular element or elements that is/are not anticipated by Nicholas et al. For a rejection to be proper under 35 U.S.C. § 103(a), the differences between the prior art and the claimed subject matter must be pointed out, and then the Examiner must present a convincing argument why such differences would have been obvious to one of ordinary skill in the art at the time the invention was made. Given the ambiguity associated with the present prior art rejection based upon Nicholas et al '457, Applicants submit that it would not be proper for the next Office Action to be made Final, even if a rejection based solely upon Nicholas et al '457 is maintained, whether under 35 U.S.C. § 102(b) or § 103(a).

Claims 1 and 13 each recite in part:

> storing...data to a non-volatile memory within said fuel dispenser.

Similarly, claim 5 recites in part:

> a non-volatile storage means for storing...data within said fuel dispenser...

Applicants submit that such an invention is neither taught, disclosed, nor suggested by Nicholas et al '457 or any of the other cited references, alone or in combination.

Nicholas et al '457 discloses a block diagram (Fig. 1) of the various elements of a refueling system at a retail petroleum site. This system includes a number of fuel product dispensers 10 (i.e., gas pumps) connected to a point of sale ("POS") site controller 15. Such a POS site controller 15 is generally located in a service building (not shown). A dispenser controller 17 provides the interface between a plurality of dispensers 10 and a POS system including POS terminal 18 and site controller 15. POS site controller 15 (as better seen from Fig. 2) performs all of the computational aspects of the system which are key to the invention of Nicholas et al. Controller 15 of Nicholas et al contains a central processing unit ("CPU") 22, a memory 24 for program and short term data storage, a disk controller 32 for archival storage of data on disk, a printer interface 26, a video controller for connection to a video display 30, and a serial communications controller 31. Serial communications controller 31 acts as the interface between site controller 15 to other components of the system, including a modem 21 and dispenser controller 17.

Nicholas et al further states that it is this combination of elements within site controller 15 that enables the system to give an operator of the system realtime loss analysis. The benefits provided by this arrangement, according to Nicholas et al, are in the ability of the system to capture and analyze data from the various elements in a coordinated manner, not otherwise provided for by prior art systems. As such, it can be

seen that data storage functions for the refueling system of Nicholas et al '457 are specifically and advantageously provided by memory 24 and disk controller 32 within site controller 15 and not at the individual pumps 10. Thus, Nicholas et al '457 fails to teach or suggest the present invention as set forth in independent claims 1, 5, and/or 13.

Furthermore, the overall software structure (Fig. 3) for the POS system of Nicholas et al includes a data acquisition module 42, a dispenser interface module 44, and an automatic tank gauge ("ATG") interface module 46. Data acquisition module 42 collects dispenser and tank information from dispenser interface module 44 and ATG module 46 based on dispenser events and time, and places such data in a disk file for later processing by a data analysis module 47. The main purpose of dispenser interface module 44 is to control the operation of dispensers and to provide information to operating system 40 from dispensers 10 for use in processing sales and product dispensed therefrom. Such disclosure provided by Nicholas et al '457 serves to reinforce the previous indication within the reference that the data storage and manipulation functions occur outside of dispensers 10. Therefore, Nicholas '457 clearly fails to teach or suggest the present invention as set forth in each of claims 1, 5, and 13.

For all the foregoing reasons, Applicants submit that claims 1, 5, and 13, and those claims depending therefrom, are now in condition for allowance and hereby respectfully request that the rejection thereof based upon Nicholas et al '457 be withdrawn.

If the Examiner has any questions or comments that would speed prosecution of this case, the Examiner is invited to call the undersigned at 260/485-6001.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on: January 5, 2004 .

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